

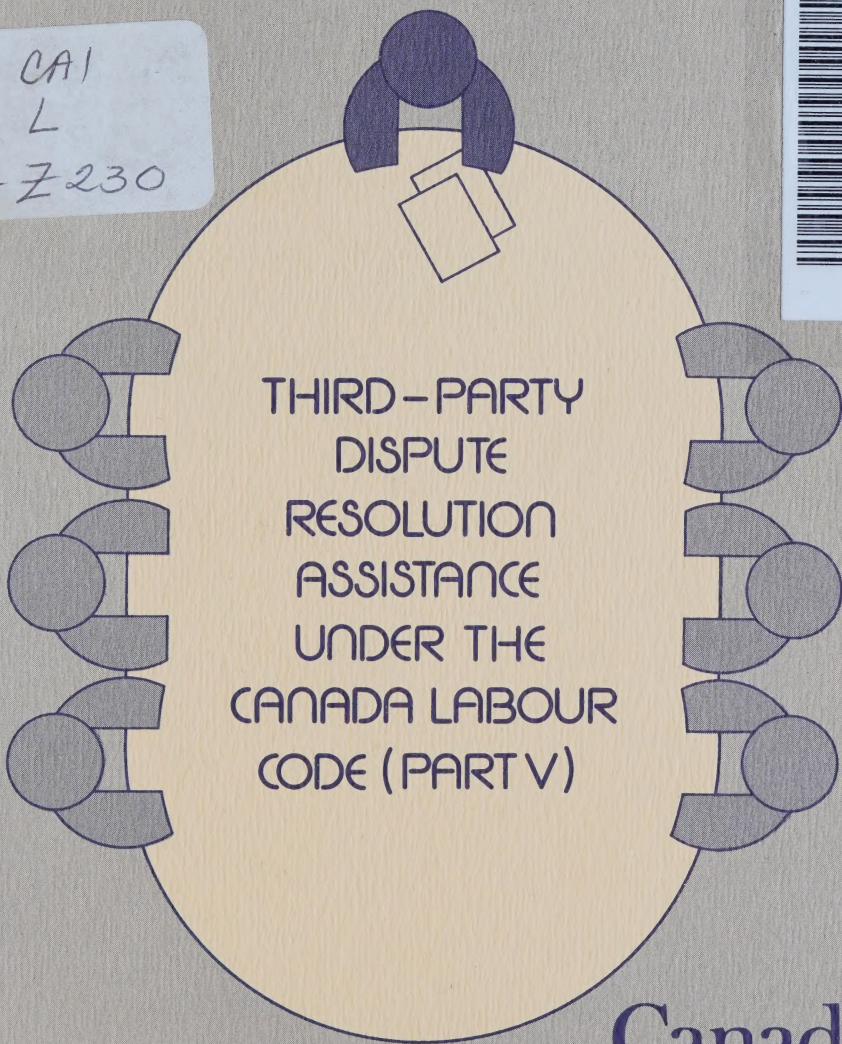


A GUIDE TO THE FEDERAL MEDIATION AND CONCILIATION SERVICE

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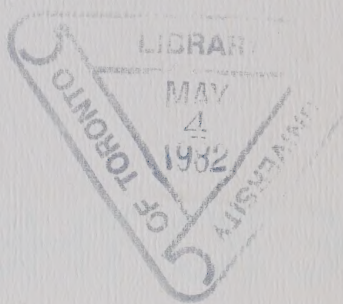
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THIRD-PARTY
DISPUTE
RESOLUTION
ASSISTANCE
UNDER THE
CANADA LABOUR
CODE (PART V)

Canada

A GUIDE TO THE FEDERAL MEDIATION AND CONCILIATION SERVICE



Published by Authority of the Honourable Charles L. Caccia,
Minister of Labour, Government of Canada

Également disponible en français sous le titre *Guide d'introduction
au Service fédéral de médiation et de conciliation.*

Additional copies of the Guide may be obtained from

Departmental Distribution Centre,
Labour Canada,
Ottawa, Ontario
K1A 0J2
(819) 997-1166

All enquiries regarding Labour Canada's programs should be
addressed to Communication Services Directorate, Labour
Canada, Ottawa, Ontario, K1A 0J2. Telephone (819) 997-2617.

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Cat. No. L82-44/1982E

ISBN 0-662-11950-9

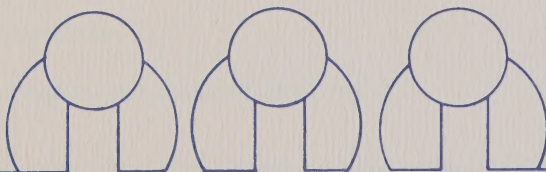
Printed in Canada


FOREWORD

The Federal Mediation and Conciliation Service administers those sections of the Canada Labour Code (Part V — Industrial Relations) that regulate the settlement of disputes and differences in collective bargaining.

This guide is an introduction to the operations of the Code. It is not a legal document. It seeks, in layman's terms, to inform employees and workers under federal jurisdiction, as well as citizens wishing to learn about Canada's industrial relations system, of the basic workings of the Code. Those requiring more detailed information should consult the Code itself and the Canada Industrial Relations Regulations.

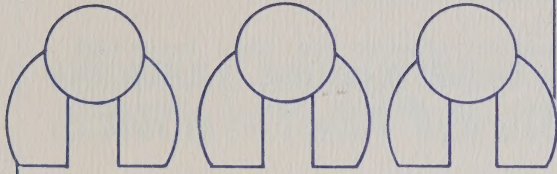
W.P. Kelly
Senior Assistant Deputy Minister
Federal Mediation and Conciliation Service





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INTRODUCTION

Although federal jurisdiction over labour relations extends to only a relatively small percentage of the Canadian labour force, the industrial activities covered by the Canada Labour Code are vital to our nation's economy. Enterprises governed by the Canada Labour Code include:

- Interprovincial and international
 - railways
 - highway transport
 - telephone, telegraph and cable systems
 - pipelines
 - canals
 - ferries, tunnels and bridges
 - shipping and shipping services
- Radio and television broadcasting, including cablevision
- Air transport and airports
- Banks
- Grain elevators
- Flour and feed mills
- Certain Crown corporations.

The Canada Labour Code is comprised of three parts:

Part III (Labour Standards) establishes minimum standards for such working conditions as hours, overtime, holidays, and maternity leave.

Part IV (Occupational Safety and Health) sets out measures for protecting the health and safety of workers.

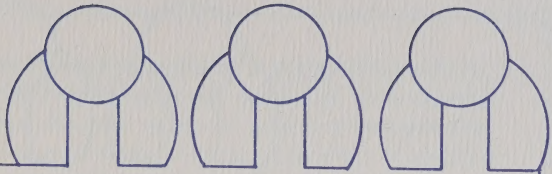
Part V (Industrial Relations) provides the legal framework regulating the industrial relations system and prescribes the procedures for settlement of disputes through third-party intervention.

Labour Canada is responsible for the administration of Parts III and IV while responsibility for the administration of Part V is shared between the department's **Federal Mediation and Conciliation Service** and the Canada Labour Relations Board — an independent organization with quasi-judicial responsibilities.

CANADA LABOUR RELATIONS BOARD

The Canada Labour Relations Board is an independent, quasi-judicial agency which has specific responsibilities relative to the interpretation and administration of Part V of the Canada Labour Code. These responsibilities include, among other things: determination of appropriate bargaining units; conducting representation votes; certification of bargaining agents; hearing and deciding on complaints of unfair labour practices; settling the terms of a first collective agreement, if so directed by the Minister of Labour.

Questions pertaining to these subjects should be addressed directly to the Board, which is headquartered in Tower "D" of the Lester B. Pearson Building, 125 Sussex Drive, Ottawa, K1A 0X8.



FEDERAL MEDIATION AND CONCILIATION SERVICE

The Federal Mediation and Conciliation Service (FMCS) is an organizational component of Labour Canada. It is headed by a Senior Assistant Deputy Minister and is comprised of three branches:

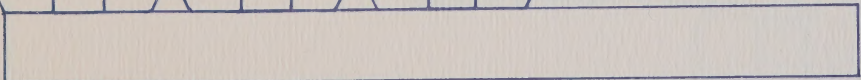
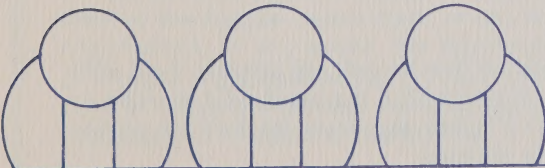
Mediation and Conciliation

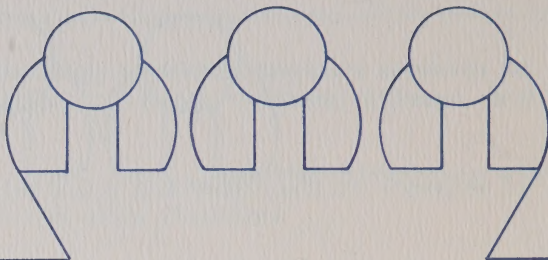
Arbitration Services

Program Planning and Technical Support

The latter two branches are located at headquarters in the National Capital Region, while the Mediation and Conciliation branch is comprised of a headquarters unit and six field offices located in Vancouver, Winnipeg, Toronto, Montreal, Halifax and St. John's, Nfld.

Addresses and telephone numbers of these offices may be found on the last page of this pamphlet.





THE CONCILIATION PROCESS

After a union has been formally certified by the Canada Labour Relations Board, it has the responsibility of representing the employees in the bargaining unit. Either party to the collective bargaining relationship has the right to serve a "notice to bargain" on the other. It is this notice which normally signals the commencement of direct negotiations. This procedure is the same whether the parties are bargaining for a first collective agreement or for the renewal of an existing agreement.

If the parties are unable to settle their collective bargaining differences through direct negotiation, either party may forward a notice of dispute, pursuant to Section 163 of the Code, to the Minister of Labour. The notice of dispute (normally in letter form) must contain the name and address of each party to the negotiations; a copy of the notice to bargain and the date it was given; a copy of any existing collective agreement; and a brief summary of the progress of negotiations. It must be signed by an authorized representative of the applicant.

Upon receipt of a proper notice of dispute under Section 163 of the Code, the minister is required to select one of the following options:

- the appointment of a conciliation officer;
- the appointment of a conciliation commissioner or conciliation board;
- the notification to the parties that he will not provide them with conciliation assistance, in which case the legal right to strike or lockout is attained seven (7) clear days from the date the parties are notified of minister's decision.

The minister will usually choose to appoint a conciliation officer. These officers are FMCS employees with expertise in industrial relations, usually gained through years of practical experience. They meet with the parties and endeavour to assist them to reach a mutually acceptable compromise on the issues in dispute.

Conciliation officers have no authority to compel the parties to settle. They try to explore various alternatives with the negotiators and make suggestions for possible areas of settlement.

If the conciliation officer is not successful in assisting the parties to resolve their dispute, he or she must report to the minister. Upon receipt of a conciliation officer's final report made pursuant to Section 165, the minister will then take all factors into consideration and decide to either:

- appoint a conciliation commissioner or conciliation board; or
- advise the parties that he will provide no further conciliation assistance, in which case the legal right to strike or lockout is acquired seven (7) clear days from the date the parties are notified of the minister's decision.

Conciliation boards, made up of a union nominee, a company nominee, and a neutral chairman, are rarely used in the federal jurisdiction. Disputes referred to a secondary stage of the formal conciliation process are generally assigned to a conciliation commissioner, a person outside of government with recognized experience and expertise in the field of industrial relations. The conciliation commissioner, who has the same powers as a conciliation board, meets with the parties, hears their arguments, and attempts to persuade them to compromise on the issues in dispute. If he or she is unsuccessful in this endeavour, the commissioner is required to make a written report to the Minister of Labour containing recommendations for the settlement of the outstanding issues. When he is satisfied the report is complete, the minister is required to release this non-binding report to the parties for their consideration.

The parties may agree to accept the recommendations as a settlement of the dispute, reject them, or use them as a basis for further negotiations. In any event, the legal right to strike or lockout is acquired seven (7) clear days from the date on which the minister releases the conciliation commissioner's report to the parties.

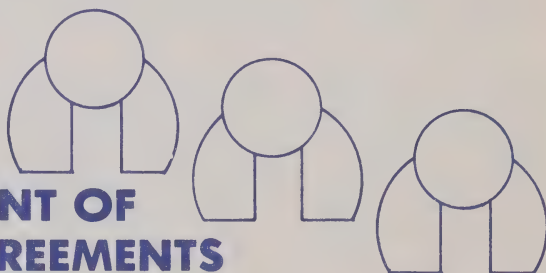


THE MEDIATION PROCESS

At any time during a collective bargaining relationship, the minister may appoint a mediator, either as a result of a request from one or both parties, or on his own initiative. As a general rule, however, such appointments are made when formal conciliation procedures under the Code have been fully exhausted and both parties have indicated their readiness to utilize the mediation process.

A mediator can be appointed during the life of a collective agreement and this is often termed as a "preventive mediation" step, as it is aimed at assisting the parties to improve their relationship and resolve problems before the critical open period of the collective bargaining process.

The mediation process is carried out by officers of the Federal Mediation and Conciliation Service.



SETTLEMENT OF FIRST AGREEMENTS

The Canada Labour Code also contains a provision enabling the Minister of Labour to refer a dispute over a first collective agreement to the Canada Labour Relations Board for determination. Before the minister may consider such a referral, every effort must have been made to conclude a collective agreement through the normal bargaining process and the conciliation and mediation procedures under the Code must have been exhausted. First agreement arbitration is not available to the parties on their own request, but is undertaken solely at the discretion of the Minister of Labour. Once the minister has referred the dispute to the Canada Labour Relations Board, the Board inquires into the circumstances of the dispute, and if it is deemed advisable, the terms and conditions for a one year collective agreement are imposed on the parties to the dispute. The Board may also decline to impose an agreement.

INDUSTRIAL INQUIRY COMMISSIONS

Under Sections 196 and 198 of the Code, the Minister of Labour has the authority to appoint an Industrial Inquiry Commission, upon application from either labour or management, or on his own initiative, where he decides that such an inquiry is necessary to deal with industrial relations issues and/or problems.

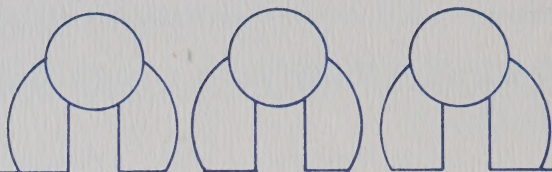
Such a commission can be made up of one or more members and is given specific terms of reference to investigate and report on particular industrial relations issues or problems. In addition to the findings of a commission, the report it produces is expected to contain recommendations on the manner in which the particular industrial relations issue or problem should be handled so that a solution may be effected.

MINISTERIAL CONSENT FOR COMPLAINTS TO THE CANADA LABOUR RELATIONS BOARD

The Canada Labour Code contains a provision requiring that the consent of the Minister of Labour be obtained before bargaining related complaints can be referred to the Canada Labour Relations Board.

The Federal Mediation and Conciliation Service screens these applications on behalf of the minister to ensure that any on-going bargaining between the parties, particularly during the conciliation and mediation stages, will not be compromised by the lodging of the complaint. In certain circumstances, an FMCS officer may be assigned to assist the parties in resolving the issues giving rise to the complaint and thus promote the resumption of bargaining.

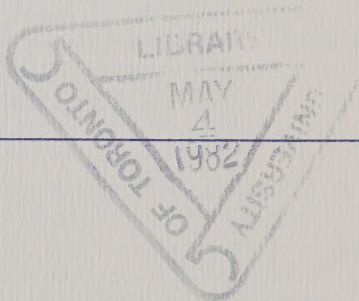
There is a specific procedure to be followed when applying for ministerial consent to complain to the Canada Labour Relations Board. This procedure is outlined in the Canada Industrial Relations Regulations, a copy of which may be obtained by writing to FMCS headquarters at the address provided at the end of this pamphlet.



GRIEVANCE ARBITRATION

Collective agreements governed by the Canada Labour Code (Part V — Industrial Relations) are required by Section 155 to contain a provision for the final settlement, without work stoppage, of all differences between the parties concerning the interpretation, application, administration or alleged violation of the agreement.

When a collective agreement does not contain a provision for the final settlement of grievances, the Code requires that the grievance be referred to an arbitrator. If the parties are unable to agree on the selection of the arbitrator, the Minister of Labour may be asked to make the appointment. Many collective agreements containing grievance arbitration mechanisms also stipulate that the Minister of Labour will be asked to name the sole arbitrator or arbitration board chairman if the parties are unable to agree on a selection. The sole arbitrator or arbitration board is required to hand down its decision within 60 days of appointment, unless the collective agreement provides for a greater or lesser delay.



FEDERAL MEDIATION AND CONCILIATION SERVICE OFFICES

HEADQUARTERS

Labour Canada,
Ottawa, Ontario
K1A 0J2

Telephone: (819) 997-3290

MOUNTAIN REGION

Labour Canada,
750 Cambie Street, 7th Floor,
Vancouver, B.C.
V6B 2P2

Telephone: (604) 666-1241

CENTRAL REGION

Labour Canada,
400 - 303 Main Street,
Winnipeg, Manitoba
R3C 3G7

Telephone: (204) 949-2418

GREAT LAKES REGION

Labour Canada,
200 - 4900 Yonge Street,
Willowdale, Ontario
M2N 6C3

Telephone: (416) 224-3845

ST. LAWRENCE REGION

Labour Canada,
2nd Floor, 2nd Wing,
Port of Montreal Bldg.,
Cité du Havre,
Montreal, Quebec
H3C 3R5

Telephone: (514) 283-5731

ATLANTIC REGION

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5670 Spring Garden Road,
7th Floor,
Halifax, N.S.
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